

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

**JOWELL C. BULLARD, NORRIS §  
RAY TOLLERSON, JR., RANDY §  
STOKES, JR., DONNA DAVIS, §  
ROBERT F. DEXTER, JR., §  
JOSHUA R. LUSTER, SCOTT RUSK, §  
JEFFORY E. POOL, TYE A. WARD, §  
JAMES DAVID SMITH, MICHAEL A. §  
KING, DOMINGO MARQUEZ, §  
STEPHEN A. WILSON, H. WAYNE §  
BLACK, CHARLES DOUGLAS WALKER, §  
GARY D. PHENIX, SCOTT BEECHER §  
HERRING, PAM J. HITT, SAMUEL RAY §  
GIBSON, JOHNNIE R. WHITAKER, §  
EUFEMIO JOE RUBALCABA, §  
CHRISTOPHER L. SCHWARZ, §  
STACY L. GRANT, §  
HERBERT CHARLES CARR, §  
CHRIS JENKINS, TODD FINLEY, §  
KEVIN WAYNE OSBORNE, §  
M.L. WITHERSPOON, §  
ALVIN VIRGIL NEWTON, §  
RODERICK J. UPTON, KEVIN LANKFORD, §  
on their own behalf and for §  
all others similarly situated, §**

**Plaintiffs,**

**v.**

**BABCOCK & WILCOX TECHNICAL  
SERVICES PANTEX, LLC.,**

**Defendant.**

**CIVIL ACTION NO. 2-07CV-049-J**

**DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON SALARY AMOUNT AND THE SALARY BASIS TEST**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Babcock & Wilcox Technical Services Pantex, LLC (“Defendant”), by and through its attorneys of record, Brown & Fortunato, P.C., respectfully moves this Court to grant partial summary judgment under Federal Rule of Civil Procedure 56.

### **SUMMARY**

1. Plaintiffs filed suit on March 19, 2007, alleging that Defendant owes them additional overtime compensation pursuant to the requirements of the Fair Labor Standards Act (“FLSA”). In response to Plaintiffs’ claims for additional overtime compensation, Defendant has asserted that all of Plaintiffs’ claims are barred on the grounds that the Plaintiffs are exempt from the overtime provisions of the FLSA. In order to prove its affirmative defense that the Plaintiffs are exempt as executive, administrative, executive/administrative, or highly compensated employees, Defendant must prove that each Plaintiff satisfies the salary amount test, the salary basis test and the applicable duties test as an exempt employee.

2. Granting partial summary judgment would focus the trial on the Plaintiffs’ duties, making it unnecessary for the parties to introduce evidence at trial that each individual Plaintiff met the salary requirements of an exempt employee under the FLSA for all relevant time periods. Because there is no genuine dispute that the Plaintiffs have been paid at least \$455 per week on a salary basis for all relevant time periods, at trial the parties should be able to focus on whether each Plaintiff satisfies the applicable duties test.

3. Accordingly, Defendant files this Motion for Partial Summary Judgment on Salary Amount and the Salary Basis Test and would show the Court as follows:

- a. Pursuant to the salary amount requirements of the FLSA, all Plaintiffs were paid at least \$455 per week for all relevant time periods; and

- b. All Plaintiffs were paid on a Salary Basis for all relevant time periods. Plaintiffs were and are paid a predetermined amount of salary on a bi-weekly basis. This salary is not subject to impermissible reductions such as reductions based on variations in the quality or quantity of the work performed by Plaintiffs.

4. Defendant has filed a Brief in Support of this Motion for Partial Summary Judgment on Salary Amount and the Salary Basis Test which includes arguments and authorities in support of this motion pursuant to the Local Rule of the Northern District of Texas 56.5. Each of the matters required by Local Rule of the Northern District of Texas 56.3(a) will be set forth in Defendant's Brief. Defendant has also filed an Appendix of Exhibits for the Brief in Support of Defendant's Motion for Partial Summary Judgment on Salary Amount and the Salary Basis Test pursuant to the Local Rule of the Northern District of Texas 56.6.

5. Therefore, Defendant's motion requests the Court rule as a matter of law that the Plaintiffs are and were compensated, for all relevant time periods, (1) more than \$455 a week and (2) on a salary basis pursuant to the requirements of the FLSA.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Motion for Partial Summary Judgment on Salary Amount and the Salary Basis Test be granted against Plaintiffs, and that Defendant have such other and further relief as the Court deems just.

Respectfully submitted,

Bradley W. Howard  
State Bar No. 00786452  
Robert C. Vartabedian  
State Bar No. 24053534  
BROWN & FORTUNATO, P.C.  
905 South Fillmore, Suite 400 (79101)  
P.O. Box 9418  
Amarillo, TX 79105-9418  
(806) 345-6300 Telephone  
(806) 345-6363 Facsimile  
bhoward@bf-law.com Email

By: /s/ Bradley W. Howard  
Bradley W. Howard

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document and that a true and correct copy was served on the parties listed below through the electronic case filing system if the Notice of Electronic Filing indicated that the parties received it or otherwise by mailing a copy by Certified Mail, Return Receipt Requested, to the parties this 17th day of December, 2007.

Michael A. Warner  
The Warner Law Firm  
101 S.E. 11<sup>th</sup>, Suite 301  
Amarillo, TX 79101

Jason C. Webster  
Matthews & Associates  
2905 Sackett  
Houston, TX 77098

/s/ Bradley W. Howard  
Bradley W. Howard